Supreme Court, U.S.
FILED
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No. 07-162

In The Supreme Court of the United States

AVERY WHEELER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

THE DISTRICT COURT ERRED WHEN IT SENTENCED THE DEFENDANT TO A LENGTHY INCARCERATION UNDER THE INCORRECT BELIEF THAT THE COURT HAD NO AUTHORITY TO DEVIATE FROM THE SENTENCING GUIDELINES

PARTIES TO THE PROCEEDING

Petitioner is Avery Wheeler
Respondent is the United States of America

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OPINIONS AND ORDERS BELOW

The unpublished per curiam decision of May 9, 2007, by the United States Court of Appeals for the Fourth Circuit appears in Appendix A. The Eastern District of Virginia's unpublished order of September 12, 2006 convicting Petitioner of Counts 1 through 11 of an 11 count indictment, appears in Appendix B.

JURISDICTION

The opinion and order of the United States Court of Appeals for the Fourth Circuit affirming Petitioner's conviction was entered on May 9, 2007. Appendix A. The jurisdiction of this Court is conferred under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides, in pertinent part, that no "cruel and unusual punishments" shall be "inflicted".

STATEMENT OF THE CASE

On March 29, 2006, Avery Wheeler (hereinafter known as "Wheeler" and/or "Defendant") was charged in a superseding indictment filed in the

United States District Court for the Eastern District of Virginia, alleging conspiracy to distribute five (5) kilograms or more of cocaine (21 U.S.C. § 846) (Count One). Wheeler was also charged with distribution and possession with intent to distribute cocaine (21 U.S.C. §841(a)(1)) (Counts Two through Eleven).

On May 19, 2006, Wheeler entered a plea of guilty which was accepted by the Honorable Walter D. Kelly Jr., United States Judge, to all eleven counts. A Presentence Report was prepared, assessing a base offense level of 38, representing the distribution of more than 150 kg of cocaine (PSR Worksheet A) Defendant's sentencing range was 292-365 months. On August 31, 2006, Wheeler appeared before the Honorable Walter D. Kelly, Jr. for sentencing. The Defendant filed a Position with Respect to Sentencing Factors, noting that he objected to the quantity of drugs attributed to him and objecting to not receiving a two point reduction for acceptance of responsibility. The Government's Position with Respect to Sentencing Factors indicated that they did not find any objections with the Presentence Report which was prepared by the probation department. At the Sentencing Hearing, the Defendant did not object to the quantity of drugs in exchange for a two point reduction, thus reducing his offense level from 38 to 36.

The Defendant's sentencing guideline range was adjusted to 235-293 months. The Court accepted this change and proceeded to hear testimony of character witnesses on behalf of the Defendant. At the conclusion of a lengthy hearing, the district court sentenced Wheeler to 235 months on Count 1, and counts 4 through 11, and a term of 235 months on counts 2 and 3 to be served concurrently with the sentence imposed on counts 1 and 4-11.

REASONS FOR GRANTING THE PETITION

At the Defendant's sentencing hearing on August 31, 2006, the trial judge imposed a sentence upon the Defendant of 235 months in prison on each of the 11 counts, to be served concurrently. In reaching this sentence, the trial judge plainly and unmistakably believed that he was bound by the sentencing range provided in the United States Sentencing Guidelines. This conclusion is buttressed by the fact that he first discussed whether the Defendant was entitled to a departure from the Guidelines range and then stated:

> I've got to conclude that the answer to that question is no. So I'm going to sentence you within the guideline range.

The trial judge then discussed his belief that the range of punishments required by the Guidelines was too harsh for the Defendant, and noted that he felt compelled to stay within the range because he had no discretion to do otherwise. He stated:

> Now, I will say this: That my judgment, Walt Kelley--remember, nobody elected me to anything. President Bush appointed me. The Senate confirmed me. But I haven't gone to the electorate. Our elected officials have made these judgments about what is the appropriate punishment, and one of the things they sought to do is uniformity. *My personal view is that 235 months, which is the bottom end of the guideline range, is too severe for a person in your situation, but at the end of the day I'm obligated to apply the law as Congress has*--they didn't write this one, but they approved it, and so that's what I'm going to do. *And I wish there was something else I could do, but under the circumstances there is not.*

(emphasis added).)

Thus, it is clear that the trial judge would have imposed a more lenient sentence upon the Defendant if he had believed that he had the authority or discretion to do so. It was only the mistaken belief that the application of the Guidelines was mandatory that prevented the trial judge from reducing the length of time that the Defendant would have to spend in prison. In fact, the minimum sentence for Counts 1, 6, 8, 9, 10, and 11 under 21 U.S.C. §§ 841 and 846 is 10 years, or 120 months, nearly one-half of the sentence imposed by the trial judge. The mandatory minimum statutory sentence for the possession and distribution charges under Counts 4, 5, and 7 is 5 years, or 60 months, and there is no mandatory minimum sentence for the distribution charges in Counts 2 and 3.

The trial judge's belief that the Guidelines were mandatory was completely wrong, The United States Supreme Court held in United States v. Booker, 543 U.S. 220 (2005) one year and nine months prior to the Defendant's sentencing, that the provisions of the Federal Sentencing Act that made the Guidelines mandatory had to be severed from the Act as one result of its decision that the Sixth Amendment required sentencing enhancements, other than the fact of prior convictions, to be found

by the jury at trial. Thus, since January 12, 2005, the date of the *Booker* ruling, the Guidelines have not been mandatory.

It is widely recognized that where a trial judge has made the mistake of believing that the Guidelines are mandatory, and that his or her sentencing discretion is limited by the Guidelines, the sentence imposed by that judge is illegal and must be vacated. For example, in United States v. Gore, 183 Fed. Appx. 372 (4th Cir. 2006), the court faced the identical set of facts and concluded that the defendant was entitled to be resentenced. The court in *Gore* began by noting:

> In *Booker*, the Supreme Court held that the mandatory manner in which the Sentencing Guidelines required courts to impose sentencing enhancements based on facts found by the court by a preponderance of the evidence violated the Sixth Amendment. 543 U.S. at 244, 125 S.Ct. 738.
>
> There are two types of error under *Booker*: a violation of the Sixth Amendment, by imposing a sentence greater than the maximum permitted based on facts found by a jury or

> admitted by the defendant, and a failure to treat the Sentencing Guidelines as advisory. United States v. Hughes, 401 F.3d 540, 552 (4th Cir. 2005).

Id. at 373. Then addressing the specific error in the case before it, the court concluded that the trial judge both believed that the Guidelines were mandatory and would have given the defendant a lower sentence than was imposed if he had felt that he was authorized to give a sentence not required by the Guidelines. Indeed, much as in the present case, the trial judge stated at the sentencing hearing that "my discretion by the sentencing guidelines is severely limited, and I have to live within the law." Id. at 374. The trial judge then sentenced the defendant to the sentence at the bottom of the Guidelines range, remarking about the 360-month sentence that "if you say it fast, it might not sound like much, but it is a lifetime. It is a lot of time. And I think that's more than enough in this particular case." Id.

The court in *Gore* summarized the applicable law as follows:

In United States v. White, 405 F.3d 208 (4th Cir.), *cert. denied*, ___ U.S. ___, 126 S.Ct. 668, 163 L.Ed.2d 539 (2005), we held that treating the guidelines as mandatory was error in light of *Booker*, and that the error was plain. White, 405 F.3d at 216-17. We declined to presume prejudice, *id.* at 217-22, holding that the "prejudice inquiry, therefore, is . . . whether after pondering all that happened without stripping the erroneous action from the whole, . . . the judgment was . . . substantially swayed by the error." Id. at 223 (internal quotation marks and citations omitted).

To make this showing, a defendant must "demonstrate, based on the record, that the treatment of the guidelines as mandatory caused the district court to impose a longer sentence than it otherwise would have imposed." Id. at 224. Because "the record as a whole provide[d] no nonspeculative basis for concluding that the treatment of the guidelines as mandatory 'affect[ed] the district court's selection of the sentence imposed,'" *id.*

> at 223 (quoting Williams v. United States, 503 U.S. 193, 203, 112 S.Ct. 1112, 117 L.Ed.2d 341 (1992)), we concluded in *White* that the error did not affect the defendant's substantial rights, and thus, we affirmed the sentence. Id. at 225; *see also* United States v. Collins, 412 F.3d at 524-25 (4th Cir. 2005) (finding that defendant failed to demonstrate prejudice from being sentenced under a mandatory application of the sentencing guidelines).
>
> Here, there is a nonspeculative basis on which to conclude the district court's application of the Sentencing Guidelines as mandatory affected its selection of the sentence imposed upon Jeffrey Gore.

Id. The court thus vacated the defendant's sentence and remanded the case to the district court for resentencing in light of *Booker*.

In the present case, there also exists a nonspeculative basis on which to find that the trial court's belief that the Guidelines were still mandatory affected the sentence that was imposed, as the trial judge plainly stated that his view was

that the bottom end of the Guidelines range was "too severe for a person in your situation," but that he felt "obligated to apply the law as Congress has." Moreover, the trial judge specifically told the Defendant that "I wish there was something else I could do, but under the circumstances there is not." It is clear that the judge would have given a more lenient sentence had he believed that the Guidelines were not mandatory.

Thus, this Court should follow the ruling in *Gore* and vacate the Defendant's sentence. For further examples of recent cases from the Fourth Circuit compelling this conclusion, see United States v. Wilkes, 183 Fed. Appx. 297 (4th Cir. 2006)[1] (district court's intimation that it would have imposed a lighter sentence if it were not bound by the Sentencing Guidelines provided a nonspeculative basis for concluding that the treatment of the Guidelines as mandatory affected the court's selection of the sentence imposed, and thus, defendant's sentencing to 292 months' imprisonment for conspiracy to possess with intent to distribute cocaine base and cocaine, distributing cocaine and cocaine base, possession of firearm in furtherance of drug trafficking crime, and possession with intent to

distribute cocaine and cocaine base under mandatory rather than advisory Sentencing Guidelines was plain error affecting defendant's substantial rights), and United States v. Singleton, 178 Fed. Appx. 259 (4th Cir. 2006)[2] (enhancement of defendant's sentence pursuant to a mandatory Guidelines scheme warranted remand for resentencing under an advisory scheme, even though the sentencing court declined to grant a departure from the Guidelines based upon defendant's state of mind or proportionality concerns; the sentencing court declined to consider even the idea of an advisory Guidelines sentence, such that there was no indication as to what that sentence might have been).

For similar cases from other jurisdictions, see United States v. Williams, 464 F.3d 443 (3rd Cir. 2006) (remand was necessary for defendant's resentencing for conspiracy to distribute cocaine and cocaine base and possession of a firearm in furtherance of a drug trafficking offense, since defendant was sentenced under mandatory rather than advisory Sentencing Guidelines); United States v. McLee, 436 F.3d 751 (7th Cir. 2006) (plain error under *Booker* occurs as result of sentencing under unconstitutional mandatory Sentencing Guidelines system if district court would have imposed a more lenient sentence had the court not believed it was

bound by the Guidelines); United States v. Rosas, 410 F.3d 332 (7th Cir. 2005) (plain error will be found to exist even in the absence of a constitutional violation by virtue of the mere mandatory application of the Sentencing Guidelines and the district court's belief that it was required to impose a Guidelines sentence); and United States v. Wilson, 170 Fed. Appx. 100 (11th Cir. 2006) (record did not allow court of appeals to say with fair assurance that defendant's sentence was not substantially affected by error in sentencing under mandatory rather than advisory Sentencing Guidelines, and thus, government failed to meet burden to show that error was harmless; although defendant's 72-month sentence was two months higher than bottom of 70- to 87- month Guidelines range, and district court stated that it believed the sentence was appropriate, court also commented that defendant would be resentenced if the Guidelines went down in flames).

CONCLUSION

Because the facts demonstrate plain error in this case, the Defendant moves that his sentence be reversed and that he be resentenced in accordance with the principles set forth in *Booker* and *Gore*.

AVERY WHEELER

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APPENDIX

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Exhibit A · Unpublished Opinion of the United States Court of Appeals for the Fourth Circuit; Record No. 06-5020, United States of America v. Avery Wheeler

Exhibit B · Judgment of the United States District Court, Eastern District of Virginia; United States of America v. Avery Wheeler

Exhibit "A"

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 06-5020
UNITED STATES OF AMERICA,
Plaintiff - Appellee,
versus
AVERY WHEELER,
Defendant - Appellant.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Walter D. Kelley, Jr., District
Judge. (2:05-cr-00113-WDK)

Submitted: March 26, 2007 Decided: May 9, 2007

Before KING and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit
Judge.

Affirmed by unpublished per curiam opinion.

Duncan R. St. Clair, III, ST. CLAIR & ROSENBLUM, Norfolk, Virginia,
for Appellant. Chuck Rosenberg, United States Attorney, Laura M.
Everhart, Assistant United States Attorney, Norfolk, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Avery Wheeler pled guilty to one count of conspiracy to distribute and possess with intent to distribute five or more kilograms of cocaine and ten counts of distribution and possession with intent to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1), 846 (2000). The district court sentenced Wheeler at the low end of his advisory guideline range to 235 months in prison and five years of supervised release. On appeal, Wheeler contends the district court erred in imposing a sentence under the belief that the sentencing guidelines were mandatory. We affirm.

We will affirm the sentence imposed by the district court as long as it is within the statutorily prescribed range and is reasonable. United States v. Hughes, 401 F.3d 540 (4th Cir. 2005). Although the guidelines are no longer mandatory, they must still be consulted and taken into account when sentencing. United States v. Booker, 543 U.S. 220, 264 (2005). In sentencing a defendant, the district court must: (1) properly calculate the guideline range; (2) determine whether a sentence within that range serves the factors under 18 U.S.C. § 3553(a) (2000); (3) implement mandatory statutory limitations; and (4) explain its reasons for selecting the sentence, especially a sentence outside the range. United States v. Green, 436 F.3d 449, 455-56 (4th Cir.), cert. denied, 126 S. Ct. 2309 (2006). "A district court's reasons for not applying the properly calculated Guideline range must be based on the

factors listed in § 3553(a)." Id. at 456. A sentence within a properly calculated guideline range is presumptively reasonable. Id. at 457. A sentence will be found unreasonable and vacated if it is "imposed outside the Guideline range and the district court provides an inadequate statement of reasons or relies on improper factors in departing from the Guidelines' recommendation." Id.

We conclude the record does not support Wheeler's claim that the district court believed the guidelines were mandatory, and the court did not err in sentencing him at the low end of his guideline range. The court correctly informed Wheeler that "while the sentencing guidelines are advisory" the court would "give great consideration to the sentence that the guidelines recommend." After properly calculating the guideline range, the court heard from the parties as to whether a guideline sentence of 235 to 293 months served the factors set forth under 18 U.S.C. § 3553(a). The Government argued a sentence within the advisory guideline range was appropriate. Wheeler requested leniency and argued there was "some reason for the Court to deviate from the guidelines." Considering Wheeler's history and characteristics, the court determined that he was not significantly more deserving of a lower sentence than the typical defendant whose crime and history had produced his guideline range. See United States v. Perez-Pena,

453 F.3d 236, 245 (4th Cir.), cert. denied, 127 S. Ct. 542 (2006).

Although Wheeler had shown initiative by graduating from college and had the support of family and friends, he was also responsible for distributing a significant quantity of cocaine beginning while he was on supervised release on a prior conviction for conspiracy to commit witness retaliation. While the district judge stated his "personal view" was that 235 months was too severe, he recognized the need for uniformity in sentencing and concluded the § 3553(a) factors did not support a variance sentence in Wheeler's case.

Accordingly, we affirm Wheeler's conviction and sentence.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Exhibit "B"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA

V.

AVERY WHEELER,

Defendant.

Case Number 2:O5CROO1 13-001
USM Number 50947-083

JUDGMENT IN A CRIMINAL CASE

The defendant, AVERY WHEELER, was represented by Bruce C. Sams.

The defendant pleaded guilty to counts I through II. Accordingly, the defendant is adjudged guilty of the following counts, involving the indicated offenses:

Title & Section	
T.21:846 T.21:841(a)(1) and (b)(1)(C) and T.18:2 T.21 :841 (a)(1) and (b)(1)(C) and	

T.18:2

Nature of Offense

Conspiracy to Distribute and Possess with Intent to Distribute Cocaine (Felony)

Distribution and Possession with Intent to Distribute Cocaine (Felony)

Distribution and Possession with Intent to Distribute Cocaine (Felony)

Date Offense Concluded

May 23, 2004

June, 2002

Winter, 2003

Count Number(s) 1, 2, 3

As pronounced on August 31, 2006, the defendant is sentenced as provided in pages 2 through 8 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must

notify the court and United States Attorney of material changes in economic circumstances.

Signed this 12th day of September,. 2006

/s/ Walter D. Kelley
United States District Judge

Continuation of Counts from Page 1

Title & Section Nature of Offense

T.21:841(a)(1) and (b)(1)(B)Qi) and Distribution and Possession with Intent to
T.18:2Distribute Cocaine (Felony)
T.21 :841 (a)(1) and (b)(1)(C) and Distribution and Possession with Intent to
T.18:2Distribute Cocaine (Felony)
T.21:841(a)(1) and (b)(1)(A)(ii) and Distribution and Possession with Intent to
T.18:2Distribute Cocaine (Felony)
T.21:841(a)(1) and (b)(1)(B)(iI) and Distribution and Possession with Intent to
T.18:2Distribute Cocaine (Felony)
T.21:841(a)(1) and (b)(1)(A)(ii) and Distribution and Possession with Intent to
T.18:2Distribute Cocaine (Felony)
T.21:841(a)(1) and (b)(1)(A)(ii) and Distribution and Possession with Intent to
T.1 8:2 Distribute Cocaine (Felony)
T.21:841(a)(1) and (b)(1)(A)(ii) and Distribution and Possession with Intent to
T.18:2Distribute Cocaine (Felony)
T.21:841(a)(1) and (b)(1)(A)(ii) and Distribution and Possession with Intent to

T.18:2Distribute Cocaine (Felony)
Date Offense Concluded and Count Number(s)
May, 2003 4
June, 2003 5
July, 2003 6
Sept. 10, 2003 7
Fall, 2003 8

Fall, 2003 9
December, 2003 10
May23, 200411

Imprisonment

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWO HUNDRED THIRTY-FIVE (235) MONTHS. The term consists of TWO HUNDRED THIRTY-FIVE (235) MONTHS on counts ONE through ELEVEN, all to be served concurrently.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows;

Defendant delivered on _____ to _____ at _____ with a certified copy of this Judgment.

Mailed: ~tkII4(b Tj
c: P.O. (2) ~

MshI. (4)~

_____

U.S.Atty. United States Marshal
U.S.CoII.
Oft. CnsI. By _____
PTS Deputy Marshal
Financial Registrar
ob

Supervised Release

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE (5) YEARS. This term consists of FIVE YEARS on Counts ONE through ELEVEN, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime.

While on supervised release, the defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

While on supervised release, the defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

Supervised Release
STANDARD CONDITIONS OF SUPERVISED RELEASE

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below):

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully alt inquiries by the probation officer and follow the instructions of the Probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons.

6) The defendant shall notify the Probation Officer at least ten days prior to any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional conditions:

1. The defendant shall participate in a program approved by the Probation Office for substance abuse, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with partial cost to be paid by the defendant, all as directed by the probation officer.

Criminal Monetary Penalties

The defendant shall pay the total monetary penalties under the schedule of payments on Schedule of Payment ·

Count	Assessment	Restitution
I	$100.00	
2	$100.00	
3	$100.00	
4	$100.00	
5	$100.00	
6	$100.00	
7	$100.00	
8	$100.00	
9	$100.00	
10	$100.00	
11	$100.00	
Total	$1,100.00	

FINE

No fines have been imposed in this case.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

Payment is due in full immediately.

Payment in equal monthly installments of not less than $100.00 until paid in full. Said payments shall

commence 60 days after release from imprisonment to a term of supervision.

At the time supervision commences, the probation officer shall take into consideration the defendant's economic status as it pertains to his ability to pay the special assessment ordered and shall notify the court of any changes that may need to be made to the payment schedule.

Any special assessment, restitution, or fine payments may be subject to penalties for delinquency and default. Nothing in the court's order shall prohibit the collection of any judgment or fine by the United States.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.